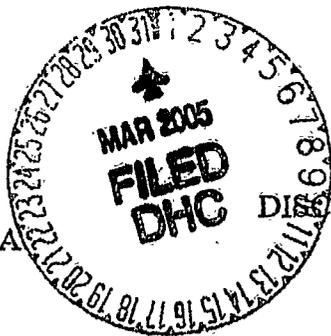


13386

WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 36

THE NORTH CAROLINA STATE BAR )  
Plaintiff )

v. )

RICHARD D. POLING, ATTORNEY )  
Defendant )

) FINDINGS OF FACT  
) CONCLUSIONS OF LAW  
) AND ORDER OF DISCIPLINE  
) BY CONSENT

THIS MATTER came on to be heard and was heard by a hearing committee composed of Richard T. Gammon, Elizabeth Bunting and Betty Ann Knudsen on February 18, 2005, with Root Edmonson and Carolin Bakewell representing the State Bar and Richard D. Poling appearing on his own behalf. Based upon the pleadings herein, the evidence introduced at trial and the consent of the parties hereto, the hearing committee hereby enters the following Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline.

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Richard D. Poling, ("Poling") was admitted to the North Carolina State Bar in 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods relevant hereto, Poling was engaged in the practice of law in Charlotte, North Carolina.

4. The State Bar's complaint in this action was filed on June 29, 2004.

5. Poling was properly served with the summons and complaint and made an appearance in this matter by filing an answer on Aug. 16, 2004.

6. On Dec. 17, 2004, Poling withdrew his answer.

7. The Secretary of the N.C. State Bar entered Poling's default on Jan. 3, 2005.

8. On Jan. 5, 2005 the Chair of the Disciplinary Hearing Commission entered an order sanctioning Poling for his failure to comply with the Chair's discovery order of Dec. 1, 2004. Pursuant to the sanctions order, Poling was forbidden to submit evidence in Phase I of the trial of this matter.

9. Poling was properly served with a copy of the order of default and notice of the hearing herein.

10. On Jan. 30, 2004, Poling telephoned MBNA America ("MBNA"), a credit card company at which Poling maintained an account, and knowingly and intentionally directed MBNA to debit the credit card account of Robert Karney ("Karney") in the amount of \$21,000. Poling further directed MBNA to transfer the \$21,000 to Poling's personal account number 9070043080 at Wachovia Bank ("Wachovia personal account").

11. Karney, who was then Poling's landlord and had formerly practiced law with Poling, did not agree to permit Poling to debit Karney's credit card account in any amount.

12. On or about Feb. 3, 2004, the \$21,000 debit from Karney's MBNA account was credited to one of Poling's Wachovia personal accounts. Shortly thereafter, Poling withdrew at least \$9,000 of that amount and disbursed the funds for his own use and benefit without Karney's knowledge or consent.

13. On or about Feb. 9, 2004, upon request from MBNA, Poling paid \$21,000 to MBNA and MBNA restored funds to Karney's MBNA account.

14. Catherine Chapman ("Ms. Chapman"), a Wachovia Bank employee, was a service representative assigned to Poling's Wachovia business accounts, and routinely contacted Poling by telephone when Poling's Wachovia business/operating account number 2000001215216 ("Wachovia operating account") required a deposit, and routinely transferred funds as requested by Poling into the operating account from Poling's other Wachovia business and personal accounts.

15. On Nov. 21, 2003, Poling knowingly and intentionally directed Ms. Chapman to transfer \$16,287.64 from his Wachovia attorney trust account 200001215740 ("Wachovia trust account") to his Wachovia operating account.

16. The \$16,287.64 transferred from Poling's trust account to his operating account was the property of Poling's clients.
17. The balance in Poling's operating account was negative \$16,287.64 immediately before the transfer of the \$16,287.64 in trust funds to his operating account, and the balance in Poling's trust account was \$699,352.14. After the trust funds were credited to Poling's operating account, the balance in the operating account was brought up to zero.
18. On Feb. 24, 2004, the sum of \$16,287.64 was thereafter transferred from the Wachovia operating account back to the Wachovia trust account.
19. Poling used the \$16,287.64 in client funds for his own use and benefit without the knowledge or consent of his clients.
20. On or about Dec. 8, 2003, Poling knowingly and intentionally directed Ms. Chapman by telephone to transfer \$14,960.21 from his Wachovia trust account to his Wachovia operating account.
21. The \$14,960.21 transferred from Poling's Wachovia trust account to his Wachovia operating account was the property of Poling's clients.
22. On Dec. 8, 2003, just before Poling directed the transfer of \$14,960.21 in trust funds to his Wachovia operating account, the balance in Poling's Wachovia operating account was \$90, and the balance in Poling's trust account was \$727,129.42.
23. Poling used the \$14,960.21 in trust funds for his own use and benefit without the knowledge or consent of his clients.
24. On May 1, 2003, Poling knowingly and intentionally transferred \$14,644.88 from his Wachovia attorney trust account to American Express, where Poling had a credit card account.
25. The \$14,644.88 transferred from Poling's Wachovia trust account was the property of Poling's clients.
26. Poling used the \$14,644.88 for his own benefit without the knowledge or consent of his clients.
27. The sum of \$14,644.88 was thereafter transferred from the Wachovia operating account back to the Wachovia trust account on or about June 10, 2003.
28. On May 9, 2003, Poling knowingly and intentionally transferred \$9,083.94 from his Wachovia attorney trust account to American Express.

29. The \$9,083.94 transferred from Poling's trust account was the property of Poling's clients.

30. Poling used the \$9,083.94 for his own benefit without the knowledge and consent of his clients.

31. The sum of \$9,083.94 was thereafter transferred from the Wachovia operating account back to the Wachovia trust account on or about June 10, 2003.

32. On June 30, 2003, Poling knowingly and intentionally transferred \$19,005.57 from his Wachovia attorney trust account to American Express.

33. The \$19,005.57 transferred from Poling's Wachovia trust account to American Express was the property of Poling's clients.

34. Poling used the \$19,005.57 transferred from his Wachovia trust for his own benefit, without the knowledge and consent of his clients.

35. The sum of \$19,005.57 was thereafter transferred from the Wachovia operating account back to the Wachovia trust account on or about September 24, 2003.

36. Poling's trust account remains at least \$14,960.21 short of the amount that should be held in the account for his clients.

37. At all times relevant hereto, Poling has maintained a law office in Charlotte N.C. and employed at least one salaried individual.

38. Poling was the principal responsible for filing all returns and paying all taxes on behalf of his law office.

39. Poling willfully failed to file timely state and federal withholding tax returns and failed to timely pay the state income tax withheld from his law firm's wages, as required by N.C. Gen. Stat. §§105-163.2 and 105-163.6 for some or all of the reporting periods for the calendar year 2003.

40. Willful failure to timely file a state tax return or timely pay state income tax withholdings when due is a Class 1 misdemeanor pursuant to N.C. Gen. Stat. §105-236(9).

41. Willful failure to timely file a federal tax return or timely pay federal income tax withholdings when due is a misdemeanor pursuant to 26 U.S.C. § 7203.

42. For some portions of 2003, Poling also failed to hold amounts due the taxing authorities for employee withholding intact in his office/operating account.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

#### CONCLUSIONS OF LAW

1. By knowingly and intentionally directing employees of MBNA America to debit the credit card of Robert Karney in the amount of \$21,000 and to transfer the funds to Poling's Wachovia personal account and by using at least \$9,000 of the proceeds for his own use and benefit without Karney's knowledge and consent, Poling engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in criminal conduct in violation of Rule 8.4(b).

2. By directing the transfer of \$16,287.64 in client funds from his trust account to his personal account on Nov. 21, 2003, by directing the transfer of \$14,960.21 in client funds from his trust account to his personal account on Dec. 8, 2003 and by using those funds for his own benefit without the knowledge or consent of his clients, Poling engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct in violation of Rule 8.4(b) and failed to hold client funds in trust in violation of Revised Rule 1.15-2(a) and (j).

3. By transferring \$14,644.88 in client funds from his trust account on May 1, 2003 to American Express, transferring \$9,083.94 in client funds from his trust account on May 9, 2003 to American Express and by transferring \$19,005.57 in client funds from his trust account on June 30, 2003 to American Express for his personal obligations without the knowledge or consent of his clients, Poling engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct in violation of Rule 8.4(b) and failed to hold client funds in trust in violation of Revised Rule 1.15-2(a) and (j).

4. By unlawfully and willfully failing to timely file and timely pay state and federal income tax withholdings when those taxes were due, Poling engaged in criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

## FINDINGS OF FACT REGARDING DISCIPLINE

1. Poling's conduct is aggravated by the following facts:
  - a) He was motivated by a dishonest or selfish motive.
  - b) He engaged in a pattern of misconduct.
  - c) He engaged in multiple violations of the Rules of Professional Conduct.
  - d) He has failed to make full restitution.
  - e) He has substantial experience in the practice of law.
2. Poling's misconduct is mitigated by the fact that he has no prior discipline.
3. The aggravating factors substantially outweigh the mitigating factors.
4. Poling's misconduct has caused significant harm to his clients and members of the public.
5. Poling's misconduct has also harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system.
6. Disbarment is the only sanction that can adequately protect the public for the following reasons:
  - (a) An order of discipline less than disbarment would not sufficiently protect the public because Poling committed misdeeds involving moral turpitude and violations of the public trust.
  - (b) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Poling committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.
  - (c) The protection of the public requires that Poling not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

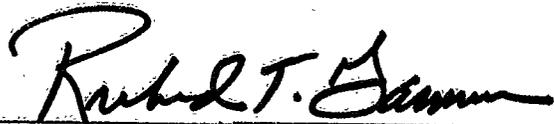
Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law

howsoever designated, the Hearing Committee, with the consent of Defendant, hereby enters the following:

ORDER OF DISCIPLINE

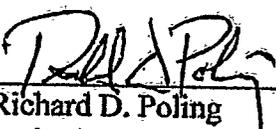
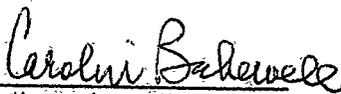
1. Richard D. Poling is hereby DISBARRED from the practice of law.
2. Poling shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him if he has not already done so in connection with his prior orders of discipline.
3. Poling shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Poling. The costs shall include the State Bar's expenses incurred in deposing Franklin Chandler.
4. Poling shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

Signed by the undersigned chairman with the full knowledge and consent of the other Hearing Committee members, this the 31<sup>st</sup> day of March, 2005.



Richard T. Gammon, Chair  
Disciplinary Hearing Committee

Seen and consented to:

  
Richard D. Poling  
Defendant  
Carolin Bakewell  
Plaintiff's Attorney